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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN JERROD COLLINS,

Defendant and Appellant.

B211011

(Los Angeles County
Super. Ct. No. GA068152)

APPEAL from a judgment of the Superior Court of Los Angeles County.
David S. Milton, Judge. Affirmed as modified.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Alvin Jerrod Collins, also known as Tiny Peewee, appeals from the judgment entered upon his convictions by jury of two counts of first degree residential burglary (Pen. Code, § 459, counts 1 & 3)¹ and one count of grand theft (§ 487, subd. (a), count 2).² As to each count, the jury found to be true the allegation that the offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang within the meaning of section 186.22, subdivision (b)(1)(B). The trial court found to be true the prior felony strike allegation within the meaning of sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d), the prior serious felony conviction allegation within the meaning of section 667, subdivision (a)(1) and the prior prison term allegation within the meaning of section 667.5, subdivision (b). It sentenced appellant to an aggregate state prison term of 60 years to life.

Appellant contends that (1) there is insufficient evidence to justify convictions of two burglaries, (2) if the evidence is sufficient to support both burglaries, then one must be stayed pursuant to section 654, and (3) because appellant received an indeterminate life sentence on count 1, the trial court erred in imposing the five-year gang enhancement on that count.

We modify the judgment and affirm.

FACTUAL BACKGROUND

On December 21, 2006, Los Angeles Police Department Lieutenant David Evans and the burglary surveillance team he supervised were at 39th Street and Denker Avenue, monitoring the area known as “Exposition Park.” That area was the territory of the Rollin’ 30’s Harlem Crips gang. At approximately 8:00 a.m., Lieutenant Evans saw the occupants of a bronze-colored Cadillac and a Chrysler Town and Country meet and drive away. He had seen the same two vehicles meet the previous day in West Los Angeles and believed the occupants of the Chrysler were involved in residential burglaries. The

¹ All further statutory references are to the Penal Code unless otherwise indicate.

² Codefendants in the trial court, Chamell Hayes and Adrianna Sanchez, are not parties to this appeal.

team members, in different cars, split up, some following the Cadillac and some the Chrysler. The Cadillac was a rental car, which gang members often use to commit crimes.

The Cadillac drove to a residential neighborhood on Third Avenue, stopped for a few minutes, and some people walked toward the car and got in. It then got on the freeway, drove to Glendale, exited and stopped on Jefferson Street. Appellant got out of the driver's seat, and switched places with the front passenger, later identified as Sanchez. Hayes was the third person in the car.

Sanchez "cruised around" for a short time, as though "looking for something," and eventually pulled into a driveway at 343 and 345 West Lexington Drive. They were two separate residences attached to each other that appeared to be a single dwelling from the street, 345 at the rear of the building and 343 at the front. Sanchez got out of the car several times, approached different sides of the property, and then returned to the car, got in, and closed the door.

Hayes then got out of the car, jumped over the fence on the east side of the property and opened the gate to allow appellant to enter. Lieutenant Evans, from a neighbor's backyard, was able to see Hayes standing near the backdoor at 345 Lexington Drive, joined by appellant, trying to cut or pry open a window screen. Hayes eventually climbed through a bathroom window. A minute later, the backdoor opened, and appellant entered.

Five to 10 minutes later, appellant and Hayes exited the backdoor. They went to the east side of the property and "work[ed] on" another door at 343 Lexington Drive, and entered that residence. Five to 10 minutes later they exited that door and returned to the Cadillac, laughing and "high fiving" each other. They got in the Cadillac, and the three individuals left.

A member of the surveillance team then went into the two residences to confirm that they had been burglarized. In each, there were pry marks near the locks and on doors, drawers and cabinets, and the rooms had been ransacked.

When the Cadillac arrived at downtown Los Angeles, the occupants were apprehended. Officers searched the Cadillac and found two walkie-talkies, \$1,500 of jewelry, a money pouch containing \$21,174 in cash, purses, wine bottles, gloves and a screwdriver. Hayes had \$550 in cash on his person and appellant had \$1,080. The money and jewelry were returned to the owners that day.

Los Angeles Police Officer Drew Gontram testified as a gang expert. The Rollin' 30's Crips gang occupied the area that included 39th and Denker Avenue. Appellant and Hayes were Rollin' 30's Crips gang members. Members of that gang had a gang color of blue and common symbols or signs. The gang's primary purpose was to make money, and its activities included narcotics sales, robberies and burglaries. Officer Gontram introduced evidence of three predicate offenses by members of that gang. Based upon the facts of this case and Officer Gontram's experience and training, he opined that the charged burglaries were committed in association with and directed by the Rollin' 30's Crips gang with the intent to promote it.

Appellant testified in his own defense. He admitted committing the two burglaries but claimed that he did so because Lieutenant Evans coerced him to inform on his gang and commit crimes for Lieutenant Evans's personal gain. Appellant went to the residences on Lexington Drive because Lieutenant Evans gave him that address and said that there were drugs and money at that location. Appellant did not initially know that there were two separate residences at that location, but once inside 345 Lexington Drive, he "found out that there were two units." Then he "walked around to the front, 'cause I seen It was separate." He decided to burglarize the front house when he discovered that the rear house was a separate property.

DISCUSSION

I. Sufficiency of the evidence

Appellant contends that there was insufficient evidence to support two burglary convictions. He argues that he believed that the property that he burglarized was a single family residence, and there is not substantial evidence that he knew that he had entered

two separate residences. Consequently, his entry into both residences constituted a single burglary. This contention is without merit.

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) “[T]he appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.] This standard applies whether direct or circumstantial evidence is involved.” (*People v. Catlin* (2001) 26 Cal.4th 81, 139.)

Section 459 provides in pertinent part: “Every person who enters any *house, room, apartment, tenement . . . or other building, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.*” (Italics added.) Burglary is ““based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, then, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation dangerous to personal safety.” Section 459, in short, is aimed at the danger caused by the unauthorized entry itself.” (*People v. Montoya* (1994) 7 Cal.4th 1027, 1042.)

Ordinarily, “where a burglar enters several rooms in a single structure, each with felonious intent, and steals something from each, . . . he or she cannot be charged with multiple burglaries and punished separately for each room burgled *unless* each room constituted a separate, individual dwelling place within the meaning of sections 459 and 460.” (*People v. Thomas* (1991) 235 Cal.App.3d 899, 906, fn. 2; see, i.e., *People v. Richardson* (2004) 117 Cal.App.4th 570, 575 [burglary of a two-bedroom apartment

occupied by two unrelated and nonfamily roommates, who had no locks on their doors, was a single family residence for which the defendant could be convicted of only one burglary[.]’.)

But a different rule applies where a perpetrator enters a separate dwelling space that poses a new and separate danger to each of the occupants upon entry into each dwelling. (*People v. Richardson, supra*, 117 Cal.App.4th at p. 574.) Hence, entry into various private rooms within a public or commercial building can constitute separate burglaries (i.e., *People v. Elsey* (2000) 81 Cal.App.4th 948, 962 [entry into separate locked school classrooms]; *People v. Church* (1989) 215 Cal.App.3d 1151 [entry into separately leased and locked offices in an office building]; disapproved on other grounds in *People v. Bouzas* (1991) 53 Cal.3d 467, 477-480), as can entry into separate private rooms within a multiunit lodging facility (i.e., *People v. O’Keefe* (1990) 222 Cal.App.3d 517, 522 [entry into separate student dormitory rooms]; *People v. Fleetwood* (1985) 171 Cal.App.3d 982, 988 [entry into motel room]; *People v. Thomas, supra*, 235 Cal.App.3d at p. 907 [entry from garage of single family residence into a locked kitchen]; *People v. Wilson* (1989) 208 Cal.App.3d 611, 615 [entry from inside a home into a rented and locked bedroom].)

People v. O’Keefe is particularly instructive. In that case, the defendant entered a women’s dormitory building during holiday break when the dormitory was closed. He entered and took photographs hanging on the walls in several rooms. (*People v. O’Keefe, supra*, 222 Cal.App.3d at p. 521.) When prosecuted for multiple counts of burglary for entering the individual rooms, he claimed that dormitory rooms, which share kitchen and bathroom facilities, are not separate dwellings within the meaning of the burglary statute and are analogous to a single family residence. The Court of Appeal rejected this contention, observing that individual dormitory rooms can be locked, have separate telephones, beds, and desks, and the residents have the right to exclude others. It found dormitory rooms analogous to hotel rooms or apartments in an apartment complex. The shared kitchen and bathroom facilities did not make the dormitory a single family residence. (*Ibid.*)

If individual dormitory rooms within the same structure, with common bathroom and kitchen facilities, are separate dwellings with respect to the burglary statute, so too are the two residences at 343 and 345 Lexington Drive. Each was a self-contained, separate unit and had a separate entrance that could be locked. They did not share any facilities, had no common hallway or entranceway, had separate postal addresses and the resident in each had the right to exclude others. Each of appellant's unlawful entries presented a new and different danger to the residents of each location. Two unrelated residents lived in the two dwellings and entry into the second unit doubled the danger of violent confrontation.

Appellant argues that he can be convicted of only one burglary, as he did not know that there were two residences in the structure which appeared to be a single family residence. We reject this argument for two reasons. First, appellant fails to point to any authority that knowledge of the nature of a burgled structure is an element of a burglary. The law is otherwise. “[W]hether or not a burglar knows that a room in a house is a separate dwelling of a boarder is usually fortuitous, and not determinative of whether a burglary has occurred.” (*People v. Richardson, supra*, 117 Cal.App.4th at p. 575.) There is no requirement that a burglar must have knowledge about a building before he burglarizes it. (*People v. Ervin* (1997) 53 Cal.App.4th 1323, 1330.) Section 459 does not require that the defendant have knowledge that a dwelling house is inhabited in order to be guilty of first degree burglary. (*People v. Guthrie* (1983) 144 Cal.App.3d 832, 847.) The danger that the burglary statute punishes is not diminished or eliminated because the defendant does not know that he is entering a residence. (*People v. Ervin, supra*, at pp. 1330-1331.)

Second, the evidence overwhelmingly supports the inference that when appellant entered the front residence at 343 Lexington Drive he was aware that he was burglarizing a second residence. After he was in the back unit, he certainly knew that he could not enter the front unit from the back unit, or he would have done so. Instead, he exited the back unit to get to the front unit, where he again broke in. Appellant testified that although he did not know initially that there were two separate units at that location, once

inside the back unit, he “found out that there were two units.” Then he “walked around to the front, ‘cause I seen . . . [i]t was separate.” “I broke into the back of the unit, thinking that it was one unit. Come to find out, it was two units.”

Apparently realizing the fallacy in this argument, appellant takes a different tact in his reply brief. There, he argues that he did know that there were two residences, but he did not know that they were occupied by unrelated individuals. This argument is no more convincing than appellant’s first argument.

As previously stated, we are aware of no requirement that a burglar must know that a structure contains two separate dwelling units to be guilty of two burglaries. (*People v. Richardson, supra*, 117 Cal.App.4th at p. 575.) Similarly, we are aware of no requirement that a burglar who knows that there are two separate dwellings must know that they are inhabited by different residents to be guilty of two burglaries.³ If entry into a rented, locked bedroom within a house can constitute a separate burglary (*People v. Wilson, supra*, 208 Cal.App.3d at p. 615), the entry into two separate parts of a single structure that have access only through different entrances can also constitute two burglaries.

Because we find that 343 Lexington Drive is a separate dwelling from 345 Lexington Drive for purposes of section 459, appellant’s entry into each constituted a separate burglary. Accordingly, substantial evidence supports each of the burglary convictions.

II. Section 654 stay

The trial court sentenced appellant as a three-striker, to an aggregate prison term of 60 years to life, calculated as follows: on count 1, 25 years to life, plus five years for the gang allegation and an additional five years for the prior serious felony enhancement; on count 2, 25 years to life, plus five years for the prior serious felony enhancement, stayed pursuant to section 654; and, on count 3, a consecutive 25 years to life.

³ Though we need not decide the question here, it is unclear that breaking into two separate dwelling units, even if occupied by the same person, constitutes one burglary.

Appellant contends that if we reject his claim that the evidence is sufficient to support only one burglary conviction, we must nonetheless stay one of the two burglary convictions pursuant to section 654. He argues that both burglaries were part of one indivisible transaction. This contention is meritless.

Section 654 provides in part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, *but in no case shall the act or omission be punished under more than one provision.*” (§ 654, subd. (a), italics added.) A course of conduct that constitutes an indivisible transaction violating more than a single statute cannot be subjected to multiple punishment. (*People v. Butler* (1996) 43 Cal.App.4th 1224, 1248.) “If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*People v. Perez* (1979) 23 Cal.3d 545, 551.) If, on the other hand, “the [defendant] entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.” (*People v. Beamon* (1973) 8 Cal.3d 625, 639.)

Whether multiple convictions were part of an indivisible transaction is primarily a question of fact. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583.) We review such a finding under the substantial evidence test (see *People v. Osband* (1996) 13 Cal.4th 622, 730-731); we consider the evidence in the light most favorable to respondent and presume the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Holly* (1976) 62 Cal.App.3d 797, 803.) We must determine whether the violations were a means toward the objective of commission of the other. (See *People v. Beamon, supra*, 8 Cal.3d at p. 639.) Even if crimes are committed with some single and generalized intent and objective, where they are divisible in time, they may give rise to multiple violations and punishments. (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935; see *People v. Felix* (2001) 92 Cal.App.4th 905, 915.) “This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to

reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.” (*People v. Gaio, supra*, at p. 935.)

The prohibition against multiple punishments under section 654 is inapplicable here. The two units were separate dwellings within the meaning of section 459. Thus, entry into each was separate and divisible conduct. (*People v. O’Keefe, supra*, 222 Cal.App.3d at p. 522; see also *People v. James* (1977) 19 Cal.3d 99, 119.) Appellant had a separate intent and objective. He intended to enter 345 Lexington Drive to steal what was in that residence and then 343 Lexington Drive to steal what was there. The offenses were not the means of accomplishing one objective.

The opportunity to reflect on one’s conduct is a useful test of the separateness of multiple burglaries for section 654 purposes. (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1255.) Appellant could have stopped after entering the first residence and had ample opportunity to reflect on his conduct as he walked from the back unit at 345 Lexington Drive to the front unit. The temporal proximity of the two offenses does not determine whether they are divisible. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

“[S]everal cases have held that the statutory prohibition against multiple punishment is inapplicable to situations where multiple burglaries are committed at the same time and in the same building.” (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1474.) As pointed out in *O’Keefe*, appellant is not entitled to commit an exempt burglary simply because the victims were in a landlord-tenant relationship. (See *People v. O’Keefe, supra*, 222 Cal.App.3d at p. 522.)

Furthermore, the purpose of the prohibition against multiple punishments is to insure that the defendant’s punishment will be commensurate with his criminal liability. (*Neal v. State of California* (1960) 55 Cal.2d 11, 20.) There can be no doubt that committing two burglaries of two separate residences is deserving of greater punishment than burglarizing only one. Consistent with the purpose of the burglary statute to punish the danger created to personal safety by unlawful entry into a residence, that danger was

greater here, where not one, but two families were placed in personal danger by appellant's unauthorized entries. The second burglary was not incidental to the first.

People v. James supports our conclusion. There, the defendant was in a small office building after closing and was discovered by the night cleaning woman. He ordered her to “freeze,” and she ran into an office and slammed the door. The defendant kicked the door open and seized the woman and placed a knife to her chest, threatening to kill her. The woman accompanied the defendant to the door to the building to unlock it to allow him to leave. On the way, defendant entered another office and took a television and jacket. Our Supreme Court adhered to its prior precedent that only one punishment is permissible for property crimes “arising out of the same transaction . . . against property interests of several persons.” (*People v. James, supra*, 19 Cal.3d. at pp. 105, 119.) However, it refused to extend that principle to the circumstances before it, where the defendant broke into three different rented premises occupied by tenants who had no common interest other than the fortuitous circumstance that they happened to lease office suites in the same office building. (*Ibid.*) It stated: “There is no doubt that if the premises had been located in three separate buildings defendant could have been punished for three separate burglaries; he is not entitled to two exempt burglaries merely because his victims chose the same landlord.” (*Ibid.*)

III. Gang enhancement on count 1

Appellant received an indeterminate life sentence on count 1. The trial court added a five-year gang enhancement to that count pursuant to section 186.22, subdivision (b)(1)(B). Appellant contends that the trial court erred in imposing this enhancement because he received an indeterminate life sentence on that count 1. He argues that when an indeterminate sentence is imposed, the additional determinate gang enhancement in section 186.22, subdivision (b)(1) is inapplicable and, instead, the minimum parole eligibility provision of section 186.22, subdivision (b)(4) applies. Respondent agrees, as do we.

Section 186.22, subdivision (b)(1) provides that except as provided in paragraphs (4) and (5) a person convicted of a felony committed “for the benefit of, at the

direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall . . . in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows : [¶] (B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.” Subdivision (b)(5) provides that, “Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.”

When “an indeterminate life term is imposed, then the 15-year minimum parole eligibility applies rather than a determinate, consecutive enhancement.” (*People v. Harper* (2003) 109 Cal.4th 520, 525.) “[N]othing in Penal Code section 186.22, subdivision (b)(5) suggests this extended parole eligibility limitation period should be combined with an additional determinate term.” (*Ibid.*; accord, *People v. Lopez* (2005) 34 Cal.4th 1002, 1007; *People v. Johnson* (2003) 109 Cal.App.4th 1230, 1239; *People v. Ortiz* (1997) 57 Cal.App.4th 480, 485-486.) Consequently, the five-year gang enhancement must be stricken and the minimum parole eligibility term inserted.

DISPOSITION

The judgment is modified to strike the five-year gang enhancement and impose the minimum parole eligibility term of 15 years and is otherwise affirmed. On remand, the trial court is directed to modify the abstract of judgment accordingly.

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_____, J.
DOI TODD

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ